

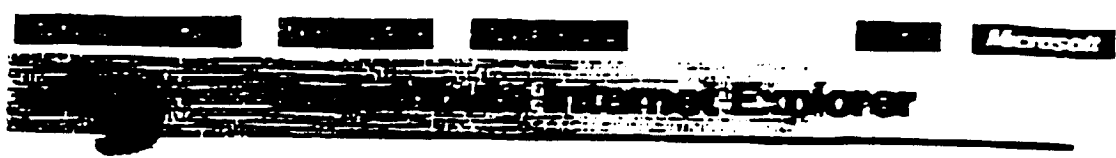
From: Dan... To: ...  
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Date: 8/16/96 Time: 14:54:38

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Page 1 of 7

http://www.microsoft.com/ie/leak/redist.htm

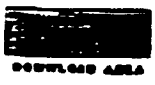


LICENSE AND DISTRIBUTION AGREEMENT (Microsoft Internet Explorer and Microsoft NetMeeting™)

TO: Eric Alexander

1. DEFINITIONS

- (a) "Internet Explorer" shall mean the (i) Microsoft Internet Explorer in all available language versions requested by COMPANY... (b) "NetMeeting" shall mean Microsoft's real-time collaboration and communication software... (c) "Internet Mail and News" shall mean the client for email and internet newsgroups... (d) "Comic Chat" shall mean the graphical internet chat client... (e) "Kit" shall mean a collection of tools that enable COMPANY to perform licensed customizations... (f) "Licensed Software" shall mean, collectively, Internet Explorer, NetMeeting, Internet Mail and News, and Comic Chat. (g) "Internet Product" shall mean any COMPANY product which provides access to or information about the Internet... (h) "License Key" shall mean the 10-digit alpha numeric code provided by MS that enables COMPANY to use the customization features in the Kit. (i) "Logo" means the "Microsoft® Internet Explorer" logo depicted in the Guidelines or such additional or replacement logos as MS may provide... (j) "Internet Site" means COMPANY's worldwide web site(s) described in the Appendices... (k) "Guidelines" means the guidelines for use of the Logo as outlined in the Microsoft Internet Explorer Logo Usage Guidelines. (l) "Criteria" means the applicable Internet Explorer criteria as defined in the Microsoft Internet Explorer Logo Qualification Criteria.



FROM: MICHAEL BLEND

Check out Exhibit "A"

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2. LICENSE GRANTS

(a) Kit. MS grants to COMPANY a nonexclusive, limited worldwide, royalty-free license during the term of this Agreement to customize Internet Explorer using the Kit in accordance with the instructions provided in the Kit's "Custom IEAK Wizard". COMPANY acknowledges and agrees that its use of the Kit to customize Internet Explorer requires the rightful receipt from MS of the License Key allocated to COMPANY. COMPANY agrees that it shall only use the Kit in accordance with the instructions provided in the Kit's Custom IEAK Wizard that is available to COMPANY upon input of the allocated License Key and the Logo Guidelines provided by MS.

(b) Licensed Software. Subject to COMPANY's compliance with the terms and conditions of this Agreement, MS grants to COMPANY a nonexclusive, worldwide, royalty-free license to use, reproduce and distribute (directly and indirectly) through COMPANY's distribution channel the Licensed Software solely for use in conjunction with COMPANY's Internet Product to COMPANY's end user customers.

(1) The Licensed Software may only be distributed as part of or for use with COMPANY's Internet Product and not as a "stand-alone" product.

(2) If MS makes a new release (other than an "Update" release which is designated by MS as a change in the hundreds digit (X(x))) of any component of the Licensed Software available, then: (i) COMPANY may no longer distribute the old version of the Licensed Software component, and may only distribute such new release of the Licensed Software component with COMPANY's Internet Product, provided, however that COMPANY may continue to distribute existing inventory of COMPANY's Internet Product containing a prior version of a Licensed Software component for a period of three (3) months following MS' release of a new release; and (ii) COMPANY must formally notify its customers on COMPANY's home page for its main public web site that an upgrade of the Licensed Software component is available at the download URL specified in the most current version of the Internet Explorer Logo License Agreement located on [www.microsoft.com](http://www.microsoft.com) for Internet Explorer and at [www.microsoft.com](http://www.microsoft.com) for other components of the Licensed Software. The text of the respective notices must state: For Internet Explorer: "Microsoft has made available a new version of Internet Explorer. Click the Internet Explorer Logo to upgrade your browser today." and for other components: "Microsoft has made available a new version of (NewMessage/Internet Mail and News/Carrie Chat). Go to [www.microsoft.com](http://www.microsoft.com) to update your software today". This notification will remain present on the COMPANY's main public web site until the earlier of COMPANY's depletion of its existing inventory, or until three (3) months following the public availability of a new release.

(3) COMPANY shall require its distributors, dealers and others in its distribution channels to comply with the relevant distribution terms of this Agreement, in particular with Sections 2.

(c) Logo. Subject to and expressly conditioned upon compliance with the terms and conditions of this Agreement, MS hereby grants to COMPANY a worldwide, nonexclusive, non-assignable, nontransferable, royalty-free, right to use the Logo solely in conjunction with the Internet Site and/or Internet Product and solely in the manner described in the Guidelines. COMPANY agrees and acknowledges: MS owns the Logo; use of the Logo will inure to the benefit of MS; COMPANY will not adopt, use or register any corporate name, trade name, trademark, service mark, or certification mark, or other designation similar to, or containing in whole or in part, the Logo; COMPANY's use of the Logo shall adhere to the Criteria.

(d) License Restrictions. The following restrictions apply to the license grant in this

Section 2

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- (1) COMPANY may not reverse engineer, decompile or disassemble the Licensed Software.
- (2) COMPANY shall only distribute NetMeeting in conjunction with Internet Explorer.
- (3) COMPANY may not permit further redistribution of the Licensed Software by end user customers of COMPANY's Internet Product.
- (4) COMPANY shall maintain and not alter or remove any copyright, trademark, and other protective notices contained in the Licensed Software, including the end user license agreement ("EULA") which is included in the setup installation of the Licensed Software. COMPANY shall also comply with Microsoft's trademark guidelines with respect to the proper use of Microsoft trademarks associated with the Licensed Software.
- (e) All rights not expressly granted herein are reserved by MS.

3. COMPANY OBLIGATIONS

COMPANY's license in Section 2 is expressly conditioned upon COMPANY's performance of the following obligations:

- (a) COMPANY shall notify MS of its first distribution of any component of the Licensed Software by emailing such information to "iservice@microsoft.com."
- (b) COMPANY shall provide MS with a quarterly volume distribution summary for COMPANY's Internet Product that includes any component of the Licensed Software. Such summary shall be provided to MS within forty five (45) days following the end of the quarter. COMPANY's summary shall specify separately for each component and version of the Licensed Software, the number of copies of the Licensed Software licensed or distributed by or for COMPANY during that calendar quarter. In the event that no copies were licensed or distributed by or for COMPANY during a calendar quarter, COMPANY shall indicate this on the volume distribution summary. All such summary reports shall be maintained in confidence by MS and shall not be disclosed to any third party except to its immediate legal and financial consultants as may be required in the ordinary course of MS' business. During the term of this Agreement, COMPANY agrees to keep all usual and proper records and books of account and all usual and proper entries relating to the Licensed Software licensed hereunder. MS may, at its expense, cause an audit to be made of the applicable records in order to verify statements issued by COMPANY. Such audit shall be conducted by an independent certified public accountant during regular business hours at COMPANY's offices and in such a manner as not to interfere with COMPANY's normal business activities. Such audits shall be made no more often than once every twelve (12) months.
- (c) COMPANY shall comply with the terms of Exhibit A.

4. OWNERSHIP

Except as expressly licensed to COMPANY in Section 2, MS retains all right, title and interest in and to the Licensed Software.

5. ACCEPTANCE AND DISCLAIMER OF WARRANTY

- (a) The Licensed Software is deemed accepted by COMPANY.

(b) Neither the COMPANY nor any of its employees shall have any right to make any representation, warranty, or promise on behalf of MS.

(c) THE LICENSED SOFTWARE AND THE KIT ARE PROVIDED TO COMPANY AS IS WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE LICENSED SOFTWARE AND THE KIT ARE ASSUMED BY COMPANY AND THE END-USER CUSTOMER. MS DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6. LIMITATION OF LIABILITY.

IN NO EVENT SHALL MS BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE OR THE KIT, EVEN IF MS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

7. TERM OF AGREEMENT.

The term of this Agreement shall commence as of the Effective Date and shall continue until terminated as provided in Section 8.

8. DEFAULT AND TERMINATION

(a) Either party may terminate this Agreement for any reason upon sixty (60) days prior written notice.

(b) Either party may suspend performance and/or terminate this Agreement immediately upon written notice at any time if the other party is in material breach of any material warranty, term, condition or covenant of this Agreement, and fails to cure that breach within thirty (30) days after written notice thereof.

(c) Upon termination of this Agreement for any reason, COMPANY's rights under Section 2 immediately terminate, provided, however, if MS terminates this Agreement without cause pursuant to Section 7 or 8(a), the license grant in Section 2(b) shall survive for a period of time equal to the earlier of: (i) three (3) months from the date of notice of termination, or (ii) time necessary for COMPANY to deplete its inventory of the Internet Product containing the Licensed Software. After such time, COMPANY shall destroy all full or partial copies of the Licensed Software and the Kit in COMPANY's possession or under its control. If this Agreement is terminated for cause pursuant to Section 8(b), COMPANY shall return to MS or destroy all full or partial copies of the Licensed Software and the Kit in COMPANY's possession or under its control within ten (10) days following the termination date, including any in-house copies COMPANY may have produced.

(d) End user licenses validly granted prior to expiration or termination of this Agreement shall survive termination or expiration of this Agreement.

(e) Sections 1, 4, 5, 6, 8, 10 and 11 shall survive termination of this Agreement.

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9 SUPPORT

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(a) COMPANY shall be responsible for providing end-user support for customers of the Licensed Software and COMPANY's Internet Product.

(b) This Agreement does not include technical support from MS to COMPANY. Technical support may be available from MS or an MS subsidiary pursuant to a separate agreement.

10. NOTICES AND REQUESTS

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

NOTICES TO COMPANY: will be provided in electronic sign-up form.

NOTICES TO MS /VOLUME DISTRIBUTION SUMMARIES:

Notice: MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
Attn: Senior Vice President, Systems  
Copy to: Law & Corporate Affairs, US Legal  
Fax: (206) 936-7209

MICROSOFT CORPORATION  
Remittance Processing  
P.O. Box 84808 Seattle, WA 98124-6108

Notification of  
Distribution: [iservice@microsoft.com](mailto:iservice@microsoft.com)

or to such other address as the party to receive the notice or request so designates by written notice to the other.

11. GENERAL

(a) This Agreement shall be construed and controlled by the laws of the State of Washington, and COMPANY consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. Process may be served on either party in the manner provided in Section 10 above, or by such other method as is authorized by law.

(b) Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or as granting a franchise.

(c) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of COMPANY and MS by their respective duly authorized representatives. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

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(d) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(e) The rights and obligations hereunder shall inure to the benefit of the successors of the parties hereto, provided any rights or obligations hereunder shall not be assigned by COMPANY without the prior written approval of MS.

(f) Any Licensed Software which COMPANY distributes or licenses to or on behalf of the United States of America, its agencies and/or instrumentalities (the "Government"), shall be provided with RESTRICTED RIGHTS in accordance with DFARS 252.227-7013(e)(ii), or as set forth in the particular department or agency regulations or rules, or particular contract which provide MS equivalent or greater protection.

(g) COMPANY acknowledges that the Licensed Software and the Kit are subject to the export control laws and regulations of the US, and any amendments thereof. COMPANY confirms that with respect to the Licensed Software, it will not export or re-export them, directly or indirectly, either to (i) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), Iran, Iraq, Libya, North Korea, and Syria); (ii) any end user who COMPANY knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (iii) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. COMPANY further acknowledges that the Licensed Software and the Kit may include technical data subject to export and re-export restrictions imposed by US law.

(h) COMPANY shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S.A. government approvals, if any, and comply with all applicable local laws and regulations as may be necessary for COMPANY's performance under this Agreement.

(i) Licensee shall pay, and be responsible for any and all sales taxes, use taxes and any other taxes imposed by any jurisdiction as a result of (a) the entry into this Agreement; (b) the performance of any of the provisions of this Agreement; or (c) the transfer of any property, rights or any other grant hereunder.

(j) If either MS or COMPANY employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

**EXECUTION OF THIS AGREEMENT:** Evidence your agreement to be bound by all terms of this Agreement (including the Logo Usage Guidelines) and execute this Agreement by clicking on the "Proceed" button. Do not proceed if you are not authorized to bind the COMPANY.

**EXHIBIT A TO THE LICENSE AND DISTRIBUTION AGREEMENT**

**COMPANY Obligations**

1. Within thirty (30) days following distribution of COMPANY's Internet Product, COMPANY agrees to deploy the advanced features of MS' Internet Explorer HTML extensions in the design of COMPANY's home page.

2. Use and display the "Microsoft Internet Explorer" logo on the home page for COMPANY's Internet Product, along with a hot link [www.microsoft.com/ie/ie.htm](http://www.microsoft.com/ie/ie.htm) as the focus of the home page.

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3. Offer the Microsoft Internet Explorer as COMPANY's preferred worldwide web browser for its customers.

4. Use Microsoft Internet Explorer liberally on COMPANY's workstations, and be solely responsible for training COMPANY's employees on using the Microsoft Internet Explorer.

5. Use the Microsoft Internet Explorer name and logo in COMPANY's packaging, advertising and promotional materials. Such use shall be pursuant to MS' standard trademark policies as attached hereto and as may be provided by MS to COMPANY from time to time.

6. Issue a press release announcing that COMPANY has licensed the Microsoft Internet Explorer within sixty (60) days following execution of this Agreement. In the event COMPANY ceases to distribute NetMeeting, COMPANY shall issue a press release announcing such distribution within sixty (60) days following execution of this Agreement. COMPANY shall provide any such press releases to Microsoft for review at least five (5) days prior to release. COMPANY agrees MS may use COMPANY's name in any press release MS issues regarding licensing of the Microsoft Internet Explorer.

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